

This petition is directed against order dated 21.12.1994 passed by Commissioner of Land Reforms & Urban Land Ceilings, Nampally, Hyderabad (hereinafter described as 'the Commissioner') whereby he dismissed the appeal filed by the petitioner under Section 33 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the Act').

The factual matrix of the case lie in a narrow compass.

After coming into force of the Act, the petitioner filed declaration in the prescribed form. By an order dated 31.10.1985 passed under Section 8(4) of the Act, the competent authority decided the surplus area case of the petitioner and held that 1051.80 square metres of land was excess. The petitioner challenged that order by filing an appeal under Section 33 of the Act. She pleaded that the property in question was joint family property purchased out of the contributions made by all members of the family and that she was only a benami holder. She further pleaded that her major sons should have been treated as independent units and given their independent share.

The appeal of the petitioner was dismissed by the Commissioner vide his order dated 21-12-1994, the relevant portion of which is reproduced below:

“The properties declared by the appellant were admittedly acquired in her name. No mention has been made in the statement filed under Section 6(1) of the Act about interest of any family members or the joint family nature of the properties, though there are specific columns (as in Annexure-A) prescribed for indicating the same therein. It is however, contended that the properties were acquired by the joint efforts of the declarant/appellant and her son and daughter who, it is stated, were majors on the date of filing of the declaration. No doubt a property acquired in the name of a family member can be, by proper evidence of the source of funds applied in such acquisition, claimed/proved as the joint family property in which all the coparceners would have a share. But it is essentially a question of fact that requires to be proved by evidence as to the application of the joint family funds in the acquisition of the property. The appellants, it appears from the sale deeds in her favour, was working as teacher. The source of income of her son and daughter by way of employment, inheritance or otherwise is not even indicated, let

alone supported by any evidence, anywhere in the averments before the Competent Authority or in this appeal. Thus, in the absence of any such evidence, there is no reason to interfere with the finding of the Competent Authority, computing the properties under appeal to the holding of the appellant. The question of any share to the major son, therefore, does not arise. The contention as to non-inclusion of a H.U.F. in the definition of person under Section 2(i) also, therefore, is not of any relevance. The various decisions of the Courts cited by the learned counsel for the appellant, in the circumstances, have no application to the facts of this case”.

Sri M.V.R. Narasimha Charya, learned counsel for the petitioner argued that the finding recorded by the Commissioner about the status of the property which became subject matter of proceedings under the Act is perverse in as much as it is not based on any evidence. He then argued that failure of the Commissioner to take into consideration the affidavits filed by the petitioner in support of her case that the property in question is joint family property should be treated as sufficient ground for grant of a declaration that the appellate order is vitiated by error of law apparent on the face of the record. Another argument of the learned counsel is that the competent authority as well as the Commissioner committed a serious illegality by deciding the surplus area case of his client ignoring the fact that application dated 9.12.1977 filed by her under Section 20(1) of the Act for grant of exemption was not decided and was kept pending till the decision of the appeal.

The learned Government Pleader supported the order of the Commissioner and argued that in exercise of power under Article 226 of the Constitution of India the High Court cannot sit in appeal over the finding recorded by the competent authority and the Commissioner regarding the status of the property. Learned Government Pleader emphasized that the petitioner did not produce any evidence before the competent authority to prove that the property in question was joint family property and argued that in the absence of such evidence, the competent authority and the Commissioner did not commit any illegality in determining the surplus

area case of the appellant by treating the property in question as her own property. Learned Government Pleader countered the argument of Sri Narsimha Charya on the issue of pendency of application dated 9.12.1977 filed by the petitioner by arguing that no such plea had been taken by the petitioner either before the competent authority or before the Commissioner and even in this petition she has not made a prayer for issuance of a mandamus for decision of that application.

I have thoughtfully considered the respective arguments and carefully scanned the record. The parameters for exercise of the High Court's power to issue a writ of certiorari are well defined by the Supreme Court. In **Syed Yakooab v. K.S. Radhakrishnan** the Supreme Court held as under:

“A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari”.

In **Surya Dev Rai v. Ram Chander Rai** the Supreme Court

noted the history of the development of High Court's jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

1. The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.
2. The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.
3. In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in super session or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.
4. The parameters for exercise of jurisdiction under Articles 226 or

.. The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.

If the petitioner's case is examined in the light of the limited scope of the High Court's power of judicial review in such matters, it is not possible to hold that the order impugned in the writ petition is vitiated by an error of law. The petitioner's assertion that the Commissioner had rejected her plea regarding the status of the property in question without taking into account the affidavits filed by her is totally devoid of substance because no material has been placed on record of this writ petition to show that the petitioner had filed affidavits to substantiate her claim that the property which became subject matter of surplus area case was joint family property. In the course of hearing, I repeatedly asked the learned counsel to show the affidavits which are said to have been filed by his client before the Commissioner, but he could not draw my attention to any such affidavits.

In my view, the petitioner's failure to produce evidence before the Commissioner to show that the property in question was joint family property is more than sufficient to negate her plea that the finding recorded regarding the status of the property is vitiated by an error of law.

The question whether the property which was declared surplus by the competent authority was part and parcel of the joint family property is a pure question of fact which can be decided only on the basis of evidence produced by the parties. The burden to prove that the land was joint family property squarely lay on the petitioner and, as she failed to adduce primary evidence to substantiate the same, the Commissioner had no option but to reject her claim.

The submission of Sri Narsimha Charya that the competent authority was duty bound to decide application dated 9-12-1977 filed by the petitioner under Section 20 (1) of the Act for grant of exemption and even at this stage the Court may issue a writ of mandamus for that purpose sounds attractive, but lacks merit. The petitioner is not shown to have raised this plea either before the competent authority or before the Commissioner and no such prayer has been made in the writ petition. Therefore, after a gap of almost 28 years from the date of filing of the application, I do not find any valid ground to entertain the oral prayer made by the learned counsel.

There is another reason for refusing relief to the petitioner. For the reasons best known to her, the petitioner has not challenged order dated 31-10-1985 passed by the competent authority for determination of her surplus area. Therefore, even if the appellate order is to be quashed, no effective relief can be given to the petitioner.

No other point has been argued.

In the result, the writ petition is dismissed.

G.S. SINGHVI, CJ

December 30, 2005.

